

LYNCHBURG CITY COUNCIL

Agenda Item Summary

MEETING DATE: **September 14, 2004**

AGENDA ITEM NO.: 23

CONSENT:

REGULAR: **X**

CLOSED SESSION:

(Confidential)

ACTION: **X**

INFORMATION:

ITEM TITLE: **Amend The City Code To Authorize The Local Board Of Building Code Appeals To Hear Appeals Concerning The Application Of The Statewide Fire Prevention Code.**

RECOMMENDATION: Adoption of the following Ordinance

SUMMARY: State regulations require that whenever a locality elects to enforce the provisions of the Uniform Statewide Building Code or the Statewide Fire Prevention Code the local governing body must appoint local Boards of Appeals to hear appeals concerning the application of the Statewide Building Code and the application of the Statewide Fire Prevention Code. In Lynchburg it was always intended that the local Board of Building Code Appeals would hear appeals concerning the application of the Uniform Statewide Building Code and appeals concerning the application of the Statewide Fire Prevention Code. During the past ten years there have only been two appeals concerning the application of the Statewide Fire Prevention Code and the local Board of Building Code Appeals heard both of those appeals. However, the 2003 amendments to the City Code which revised the sections of the City Code dealing with the local Board of Building Code Appeals did not make it clear that the Board will also hear appeals concerning the application of the Statewide Fire Prevention Code. Therefore, it is recommended that the City Code be amended to make it clear that the local Board of Building Code Appeals will hear appeals concerning the application of both the Uniform Statewide Building Code and the Statewide Fire Prevention Code.

PRIOR ACTION(S): None

FISCAL IMPACT: None

CONTACT(S): Walter C. Erwin, 455-3973

ATTACHMENT(S): Ordinance

REVIEWED BY: lkp

ORDINANCE

AN ORDINANCE TO AMEND AND REENACT SECTIONS 11-141, 11-146, 11-148, 11-149 AND 11-150 OF THE CODE OF THE CITY OF LYNCHBURG, 1981, THE AMENDED SECTIONS RELATING TO THE LOCAL BOARD OF BUILDING CODE APPEALS.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF LYNCHBURG:

1. That Sections 11-141, 11-46, 11-148, 11-149 and 11-150 of the Code of the City of Lynchburg, 1981, be and the same are hereby amended and reenacted as follows:

Sec. 11-141. Composition.

There is hereby continued in the city a board to be called the board of building code appeals, which shall hear appeals concerning the application of the Uniform Statewide Building Code and appeals concerning the application of the Statewide Fire Prevention Code. The board of building code appeals shall consist of seven (7) members. If qualified volunteers are available the members of the board shall include one member who is a licensed architect, one member who is a licensed engineer, one member who is a licensed class a building contractor, one member who is a licensed class a electrical contractor, one member who is a licensed class a plumbing or mechanical contractor, one member who is an experienced property manager and one citizen member from the city at-large. In the event qualified volunteers for one or more of the designated categories of members are not available, city council shall select at-large members on the basis of their ability to render fair and competent decisions regarding the application of the building and fire codes. At least one member of the board should be an experienced builder and one member a licensed professional engineer or architect and one member an experienced property manager.

Sec. 11-146. Quorum.

(a) Four (4) members of the board of building code appeals shall constitute a quorum. In varying the application of any provisions of the building code or the fire prevention code or in modifying an order of the building official or of the fire code official, affirmative votes of the majority present, but not less than three (3) affirmative votes shall be required. No board member shall act in a case in which he has a personal interest.

(b) When five members of the board of building code appeals are not present to hear an appeal, either the applicant or the applicant's representative shall have the right to request a postponement of the hearing. The board shall reschedule the appeal within thirty (30) calendar days of the postponement, or a longer period of time if agreed to by all parties to the appeal.

Sec. 11-148. Procedure.

The board of building code appeals shall establish rules and regulations for its own procedure not inconsistent with the provisions of the building code and the fire prevention code. The board shall meet at regular intervals, to be determined by the chairman, or in any event, the board shall meet within thirty (30) calendar days after a notice of appeal has been received. Notice indicating the time and place of the hearing shall be sent to the parties in writing to the addresses listed on the application at least fourteen (14) calendar days prior to the date of the hearing. Less notice may be given if agreed upon by the applicant.

Sec. 11-149. Appeals.

(a) Whenever the building commissioner shall reject or refuse to approve the mode or manner of construction proposed to be followed, or materials to be used in the erection or alteration of a building or structure, or the fire code official shall reject or refuse to approve a requested modification of the fire prevention code or when it is claimed that the provisions of the building code or the fire prevention code do not apply, or when it is claimed that the true intent and meaning of the building code or the fire prevention code or any of the regulations

thereunder have been misconstrued or wrongly interpreted, the owner of such building or structure, or his duly authorized agent, may appeal from the decision of the building official or the fire code official to the board of building code appeals. Notice of appeal shall be in writing and filed within twenty-one (21) days after the decision is rendered by the building official or the fire code official. Failure to submit an application for appeal within twenty-one (21) days shall constitute acceptance of the building official's or the fire code official's decision.

(b) In case of a building or structure which, in the opinion of the building commissioner or the fire code official, is unsafe or dangerous, the building commissioner or the fire code official may, in his order, limit the time for such appeal to a shorter period. Appeals hereunder shall be on forms provided by the building commissioner and the fire code official.

Sec. 11-150. Variations and modifications.

(a) The board of building code appeals, when appealed to and after a hearing, may vary the application of any provision of the building code or the fire prevention code to any particular case when, in its opinion, the enforcement thereof would do manifest injustice, and would be contrary to the spirit and purpose of the building code or the fire prevention code or public interest, or when, in its opinion, the interpretation of the building official or the fire code official should be modified or reversed.

(b) A decision of the board of building code appeals to vary the application of any provision of the building code or the fire code official or to modify an order of the building official or the fire code official shall specify in what manner such variation or modification is made, the conditions upon which it is made and the reasons therefore.

Sec. 11-151. Decisions.

(a) Every decision of the board of building code appeals shall be final, subject, however, to such remedy as any aggrieved party might have at law or in equity. It shall be in writing and shall indicate the vote upon the decision. Every decision shall be promptly filed in the office of the building commissioner or the office of the fire code official, and shall be open to public inspection; a certified copy shall be sent by mail or otherwise to the appellant and a copy shall be kept publicly posted in the office of the building official or the office of the fire code official for two (2) weeks after filing.

(b) The board of building code appeals shall, in every case, reach a decision without unreasonable or unnecessary delay.

(c) If a decision of the board of building code appeals reverses or modifies a refusal, order or disallowance of the building commissioner or the fire code official, or varies the application of any provision of the building code or the fire code official, the building official or the fire code official shall immediately take action in accordance with such decision.

(d) The board of building code appeals shall recommend to council, through the city manager, from time to time, such amendments to the building code and the fire prevention code as in their opinion and from their experience are necessary and advisable.

2. That this ordinance shall become effective upon its adoption.

Adopted:

Certified:

Clerk of Council